IN THE HIGH COURT OF JUDICTURE FOR RAJASTHAN AT JODHPUR.

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Smt. Premlata Kshotriya. Versus State of Rajasthan & ors.

S.B. Civil Writ Petition No. 2970/2006

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Date of Order: April 17, 2007

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. R.S. Saluja, for the petitioner.
Mr. B.L. Tiwari, Deputy Govt. Advocate, for respondents.

BY THE COURT:

By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks modification of the Notification Annx.5 dated 6-5-2006 to the extent restricting the maximum age limit of 40 years as on 1-1-2007 qua the petitioner and further seeks direction to the respondents to consider her candidature for the post of Supervisor against 25% direct recruitment quota posts by providing relaxation in age to the petitioner upto the extent she has served the respondents as "Aanganwari Karyakarta."

A reply to the writ petition has been filed by the respondents. The respondents came with the case that as on 1-1-2007, the petitioner attained the age of 41 years and 8

months and, therefore, she has crossed the maximum upper age limit of 40 years as on 1-1-2007 and as such she is not eligible for consideration for the post in question.

Learned counsel for the petitioner submits that an identical controversy came to be considered by this Court in Smt. Usha Rani Vs. State of Rajasthan & ors., SBCWP No. 4469/2002 decided on 19-2-2003 and wherein, while allowing the writ petition, the respondents therein were directed to consider the case of the petitioner therein in accordance with law and if she is found eligible, her case may be considered within the period of three months from the date of filing a certified copy of that order. Similar controversy also came to be decided by this Court in S

The facts and circumstances giving rise to the instant writ petition are that the petitioner was appointed as "Aanganwadi Karyakarta" vide order Annx.1 dated 1-5-1995 on the honorarium of Rs.400/- per month. While in service, the petitioner acquired the qualification of Post Graduations in Hindi and Sociology. The petitioner has been continuing in service from the date of her initial appointment as "Aangawadi Karyakarta", which is evident from the certificate Annx.3 dated 26-5-2003 issued by the respondent Department. As per the Rajasthan Women & Children Development (State and Subordinate) Services Rules, 1998 (for short, "the Rules 1998" hereinafter),

as per Appendix-II, the post of Supervisor is required to be filled-up by the ratio of 75% from the open market and 25% of the posts are required to be filled-up by direct recruitment from amongst the "Aanganwadi Karyakarta" having ten years' experience, vide communication Annx.4 dated 2-9-2004. In pursuance of Annx.4 dated 2-9-2004, the petitioner applied for the post of Woman Supervisor. Her date of birth is 10-8-1965 and she was appointed on the post of "Aanganwadi Karyakarta" in the year 1995 when she was 30 years in age. The petitioner has been denied appointment on the ground that she has crossed the upper age limit of 40 years as on 1-1-2007.

In para 9 of the reply, it has been submitted that as on 1-1-2007, the petitioner would attain the age of 41 years and 8 months and as such she has crossed the maximum age limit as provided in the Notification Annx.5.

Rule 14 of the Rules 1998 pertains to the "Age" and reads as under:-

> "Age.- A candidate for direct recruitment to a post included in the Schedule, must have attained the age of 21 years for State Service posts and 18 years for subordinate service posts and must not have attained the age of 33 years on the first day of January next following the last date fixed for receipt of applications.
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> Provided that:-
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> (1)the upper age limit mentioned above, shall be relaxed by 5 years in the case of candidates belonging to the Scheduled Castes, Scheduled

Tribes and Women candidates;

(2)the persons appointed temporarily to a post in the service shall be deemed to be within the age limit had they been within the age limit when they were initially appointed even though they may have crossed the upper age limit when they appear finally before the Commission/Appointing Authority and shall be allowed two chances had they been eligible as such at the time of their initial appointment;

(3)the upper age limit mentioned above shall be relaxed by a period equal to the service rendered in the NCC in the case of cadet Instructors and if the resultant age does not exceed the prescribed maximum age limit by more than three years, they shall be deemed to be within the prescribed age limit;

(4)notwithstanding anything contrary contained in these Rules, in the case of persons serving in connection with the affairs of the State in substantive capacity, the upper age limit shall be 40 years for direct recruitment to posts filled in by competitive examination or in case of posts filled in through the Commission or by the Appointing Authority, as the case may be, by interview.

(5)There shall be no age limit in the case of widows and divorced women.

Explanation.- That in the case of widow, she will have to furnish a certificate of death of her husband from the competent authority and that in case of divorcee she will have to furnish the proof of divorce.

(6)the upper age limit mentioned above shall be 50 years in the case of reservist namely the defence service personnel who were transferred to the Reserve.

(7)the upper age limit prescribed above shall be relaxed by 2 years in the case of candidates belonging to the other Backward Classes.”

Thus, proviso (2) to rule 14 of the Rules 1998 that the persons appointed temporarily to a post in service shall be deemed to be within the age limit had they been within the age limit when they were initially appointed even though they may have crossed the upper age limit when they finally appear before the Commission or the Appointing Authority and shall be allowed two chances had they been eligible as such at the time of their initial appointment. Thus, for in-service persons, what is required to be seen in regard to the age is that at the time of their appointment on a post temporarily, had the incumbent been within the age limit then even though they crossed the upper age limit when they appear finally before the Commission or the Appointing Authority, they shall be deemed to be within the age limit.

In the instant case, the petitioner came to be initially appointed on 1-5-1995 as "Aanganwadi Karyakarta" and at the time of her initial appointment, she was 30 years of age and as such at the time of initial appointment, she was within the age limit and, therefore, she is deemed to be within the age limit in view of the proviso (2) to rule 14 of the Rules 1998.

Proviso (1) to rule 14 of the Rules 1998 provides that the upper age limit of 33 years shall be relaxed by 5 years in the case of candidates belonging to the Scheduled Castes, Scheduled

Tribes and Women candidates. Therefore, for women candidates, the maximum age is 38 years and as per proviso (2) to rule 14 of the Rules 1998, for the in-service candidates, they will be deemed to be within the age limit had they been within the age limit when they were initially appointed even though they may have crossed the upper age limit when they appear finally before the Commission or the Appointing Authority. Thus, the petitioner's case comes within the deeming provision as provided under proviso (2) to Rule 14 of the Rules 1998. In the instant case, the petitioner has been working as "Aanganwadi Karyakata" with the respondents since 1.5.1995 and she is eligible to be considered for appointment on the post of Supervisor in view of the proviso (2) to rule 14 of the Rules 1998 by relaxing the maximum upper age limit. In this view of the matter, the writ petition deserves to be allowed.

In the result, the writ petition is allowed. The respondents are directed to consider the case of the petitioner for the post of Supervisor in accordance with law, more particularly in view of proviso (2) to rule 14 of the Rules 1998 and if she is otherwise found eligible, her case be considered for appointment on the post of Supervisor. This exercise be carried out within a period of three months from the date of production of a certified copy o this order. If presently no vacancy is available then consider her case whenever the vacancy accrues.

The case of the petitioner be considered for the post of Supervisor against 25% quota fixed for "Aanganwadi Karyakarta". There shall be no order as to costs.

(H.R. PANWAR), J.

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